

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES CARL KELLY,

Petitioner,

v.

GALVIN NEWSOME, et al.,

Respondents.

No. 1:25-cv-00085-KES-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DENYING PETITIONER'S
MOTION FOR PRELIMINARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER, DIRECTING
CLERK OF COURT TO CLOSE CASE, AND
DECLINING TO ISSUE A CERTIFICATE OF
APPEALABILITY

(Docs. 3, 8)

Petitioner James Carl Kelly is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 18, 2025, the assigned magistrate judge issued findings and recommendations that recommended dismissing the petition for lack of jurisdiction and denying petitioner's motion for preliminary injunction and temporary restraining order. Doc. 8. The findings and recommendations were served on petitioner and contained notice that any objections thereto were to be filed within thirty days after service. To date, no objection have been filed, and the time for doing so has passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de

1 novo review of the case. Having carefully reviewed the entire file, the Court holds the findings
2 and recommendations to be supported by the record and proper analysis.

3 Having found that petitioner is not entitled to habeas relief, the Court now turns to
4 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
5 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is
6 allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28
7 U.S.C. § 2253. The Court should issue a certificate of appealability if "reasonable jurists could
8 debate whether (or, for that matter, agree that) the petition should have been resolved in a
9 different manner or that the issues presented were 'adequate to deserve encouragement to proceed
10 further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S.
11 880, 893 & n.4 (1983)).

12 In the present case, the Court finds that reasonable jurists would not find the Court's
13 determination that the petition should be dismissed debatable or wrong, or that petitioner should
14 be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.

15 Accordingly:

- 16 1. The findings and recommendations issued on February 18, 2025, Doc. 8, are
17 ADOPTED in full;
- 18 2. The petition for writ of habeas corpus is DISMISSED;
- 19 3. Petitioner's motion for preliminary injunction and temporary restraining order, Doc. 3,
20 is DENIED;
- 21 4. The Clerk of Court is directed to close the case; and
- 22 5. The court declines to issue a certificate of appealability.

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25 IT IS SO ORDERED.

26 Dated: April 30, 2025

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UNITED STATES DISTRICT JUDGE